

**DISTRICT OF COLUMBIA**  
**DOH Office of Adjudication and Hearings**  
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DISTRICT OF COLUMBIA  
DEPARTMENT OF HEALTH  
Petitioner,

v.

KIDDIES KOLLEGE and  
LAURA W. SHUMATE,  
Respondents

Case No.: I-00-40101

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**DECISION AND FINAL ORDER**

**I. Introduction**

On May 16, 2000, the Government served a Notice of Infraction on Respondents Kiddies Kollege and Laura Shumate, alleging that they had violated 29 DCMR 316.1, which prescribes maximum group sizes for child development centers, and 29 DCMR 326.5, which requires child development facilities to maintain health records for each child enrolled at the facility. The Notice of Infraction alleged that the violations occurred on May 4, 2000. It sought a fine of \$500.00 for the violation of §316.1 and a fine of \$50.00 for the violation of §326.5.

Respondents filed a timely plea of Admit with Explanation along with a request for suspension or reduction of the fines. On July 11, 2000 this administrative court issued an order permitting the Government to reply to Respondents' pleas and request within ten days. No such reply was filed.

## **II. Summary of the Evidence**

In response to the charge of violating §316.1, Respondents state that they always have been licensed to care for fourteen infants. In support of that claim, they filed copies of their licenses for 1976-77 and 1984-90, each of which states that the facility may care for fourteen infants. They did not file copies of any license issued after 1990. In response to the charge of violating §326.5, Respondents state that they found the missing medical records shortly after the Government's inspector left the facility. According to Respondents, the records were on the desk where the inspector had been reviewing files, and may have slipped off the stack. Respondents further allege that they faxed the records in question to the inspector within a few hours after her departure.

As noted above, the Government has not refuted any of Respondents' claims.

## **III. Findings of Fact**

1. By their plea of Admit with Explanation, Respondents have admitted that they violated 29 DCMR 316.1 and 29 DCMR 326.5 on May 4, 2000.
2. Respondents have acknowledged responsibility for their violations, and the Government has not provided any evidence that they have a history of non-compliance.

3. There is no evidence of the number of infants permitted by Respondents' current license. More important, there is no evidence of the size of the various groups of children at Respondents' facility on the day of the inspector's visit.
4. Based upon the unrefuted evidence, Respondents promptly found the missing medical records and provided them to the inspector.

#### **IV. Conclusions of Law**

1. Respondents' plea establishes, as a matter of law, that they violated 29 DCMR 316.1 and 29 DCMR 326.5 on May 4, 2000.
2. Section 316.1 regulates the size of individual groups within a child development facility, not the total number of children cared for. Thus, even if Respondents did not violate their license's limit on the maximum number of children or infants, it does not excuse or mitigate a violation of the group size limitations in §316.1.
3. Respondents' acceptance of responsibility and their lack of a history of prior violations mitigate their violation of §316.1. Accordingly, I will reduce the \$500.00 fine for that violation to \$350.00.
4. Section 326.5 requires child development facilities to maintain certain medical records. Respondents' unrefuted evidence demonstrates that they had the required records and furnished them promptly to the inspector. Due to

Respondents' substantial, if not total, compliance with the regulation (despite their plea), suspension of the \$50.00 fine for the §326.5 violation is warranted.

#### **IV. Order**

Based upon the foregoing findings of fact and conclusions of law, it is, this \_\_\_\_\_ day of \_\_\_\_\_, 2000:

**ORDERED**, that Respondents shall cause to be remitted a single payment totaling **THREE HUNDRED FIFTY DOLLARS (\$350.00)** in accordance with the attached instructions within twenty (20) calendar days of the date of mailing of this Order (fifteen (15) calendar days plus five (5) days for service by mail pursuant to D.C. Code § 6-2715). A failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' license or permit pursuant to D.C. Code § 6-2713(f).

/s/      **11-03-00**

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John P. Dean  
Administrative Judge